IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 12 OF 2004.

Shri Vasant Vinayak Devasthali & Ors..... .... Petitioners.

V/s

Shri Dilip Moreshwar Bhat & anr..... ... Respondents.

Mr.Dilip Bodke for the petitioners.

Respondents served.

CORAM: R.M.S. KHANDEPARKAR, J.

16-12-2004

PC:

Heard the learned advocate for the petitioner.

The petitioners challenge the order passed by the Executing Court allowing the application filed by the decree holder seeking execution of the decree dated 17.8.1985 passed in Regular Civil Suit No.280 of 1982 confirmed in Regular Civil Appeal No.378 of 1986 as well as in the Second Appeal No.604 of 1989. The objection raised by the petitioners was on the ground that the decree was not executable as the respondent had failed to comply with his obligations under the said decree in relation to carrying out measurements as well as payment of consideration amount. Plain reading of the decree discloses that it was necessary for the petitioners themselves to carry out measurements and to fix boundary marks and to ascertain exact area as well as to calculate price in

respect of such an area at the agreed rate within two months from the date of passing of said decree. It was sought to be contended that the petitioners had already moved Revenue Authorities in that regard and even the measurements were carried out but the respondent failed to deposit the amount. Undisputedly there is nothing on record to disclose that such measurements were carried out with prior notice to the respondents or that after taking measurements appropriate notice was issued to the respondent informing him about measurement having been taken and the consideration which was required to be paid in relation to the area calculated by the petitioners pursuant to such measurements. Considering the same no fault can be found that the direction issued by the Executing Court to the respondent allowing him to carry out measurement and thereafter to pay the amount. The contention of the petitioner about nonexecutability of decree in the facts and circumstances is therefore totally devoid of substance. Therefore no illegality is committed nor there is any jurisdictional error disclosed in passing of impugned order by the Executing Court. There is no case for interference in powers under section 115 of the Code of Civil Procedure and therefore the petitioner is rejected.